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Supreme Court of the United States

OCTOBER TERM, 1946.

IN THE MATTER

of

SPIER AIRCRAFT CORPORATION,
Bankrupt,

SAMUEL M. COOMBS, JR., Trustee in Bankruptcy of Spier Aircraft Corporation, Bankrupt,
Appellant.

MEMORANDUM IN OPPOSITION TO WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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IN THE MATTER
of
SPIER AIRCRAFT CORPORATION,
Bankrupt,

SAMUEL M. COOMBS, JR., Trustee in Bankruptcy of Spier Aircraft Corporation, Bankrupt,
Appellant.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States.

Summary Statement of Matter Involved.

1. This appeal attempts to challenge the action by the United States Circuit Court of Appeals for the Third Circuit in affirming the judgment of the United States District Court for the District of New Jersey, in upholding the claim filed by the City of Jersey City against the estate of the Spier Aircraft Corporation, bankrupt, for personal property taxes in the sum of $11,803.04.

2. Spier Aircraft Corporation, a New York corporation, was engaged in business at 200 Central Avenue, Jersey City, New Jersey. Proceedings in involuntary bankruptcy were commenced on said corporation on January 22, 1943. On February 9, 1943, an order of adjudication in bankruptcy was entered.

3. On or about February 10, 1943, the Collector of taxes for the City of Jersey City filed a claim with the Honorable John Grimshaw, Jr., Referee in Bankruptcy, claiming unpaid personal taxes against the bankrupt estate in the sum of $3,024.96. Part of said claim was for the year 1943, in the sum of $1,611.90, together with 80 cents interest, making a total of $1,612.70 for said year 1943. This was on the basis of a valuation of $30,000, at a rate of $53.73 per thousand, and upon which the tax had been computed in the sum of $1,611.90.

4. The Collector of taxes for the taxing district of Jersey City, in conformity with N. J. S. A. 54:4-35, had started to make up his assessments upon real and personal property on or about October 1, 1942, and had completed the work by January 10, 1943, on which date he attended before the County Board of Taxation and filed with said Board his complete assessment list and a true copy thereof, which is called the Assessor's Duplicate, properly made up and legibly written in ink to be examined, revised and corrected by the County Board of Taxation.

5. In accordance with N. J. S. A. 54:4-46 (this section will be set forth in full below), said County Board of Taxation met, for the purpose of examining, revising and correcting the tax list and duplicate of the various taxing districts in the County, including the taxing district of Jersey City. Among the properties revised was the personal property of the Spier Aircraft Corporation. The said Board increased the assessed valuation from $30,000 to $165,000.

6. The taxing district of Jersey City, when it was notified by the County Board of Taxation of such changes, caused its assessor to enter in appropriate column upon the tax list and duplicate the corrected value assessed to each person for both real and personal property. Among these was the revised and corrected revaluation of the Spier Aircraft Corporation assessment.

7. The assessor, in conformity with N. J. S. A. 54:4-64 (it will be enumerated in full below), during the period between July 29, 1943, and July 31, 1943, mailed the tax bill to the Spier Aircraft Corporation, as shown by the following incident.

8. On September 28, 1943, Charles Schmidt, employee of the Assessor's Office of Jersey City, appeared before the Referee, in response to a subpœna to bring the records of the Assessor's and Collector's Offices, so that Max Rosenberg, counsel to the trustee, Samuel Coombs, could ascertain how the assessment was so increased. After examining Schmidt, on the stand under authority of the Bankruptcy Act, Mr. Rosenberg was not satisfied with Schmidt's knowledge of the situation. The Referee who was presiding suggested that Rosenberg, Schmidt and Edward M. Malone, counsel for the City of Jersey City, should go and visit the Assessor's Office to examine the duplicate copy of the tax list as revised by the County Board.

9. While at the Municipal Building, Rosenberg, Malone and Schmidt also examined the records of the Collector's Office. These records disclosed that all tax bills had been posted in the United States mail to property owners during the three-day period between July 29, 1942, and July 31, 1943. The records further disclosed that the tax bill of the Spier Aircraft Corporation, showing the increased valuation, had been posted and directed to the Aircraft Company during this same period. Therefore, in the ordinary course of delivery the tax bill had to be delivered to the Aircraft Corporation by August 1, 1943. It was never returned to the taxing district of Jersey City and counsel for the trustee does not so contend.

10. Petitioner, in paragraph 3, page 2, of his petition, argues that by the time the amended proof of claim was filed by the Collector of the City of Jersey City, the time for appeal from the increased assessment by the Hudson County Board of Taxation had expired. However, N. J. S. A. 54:4-64, among other things, provides that the validity of any tax or assessment, or the time at which it shall be payable, shall not be affected by the failure of a taxpayer to receive a tax bill, but every taxpayer is put upon notice to ascertain from the proper official of the taxing district the amount which may be due for taxes or assessments against him or his property. N. J. S. A. 54:3-21 (enumerated below), prescribes that by August 15th all taxpayers feeling aggrieved by the action of the County Board of Taxation, sitting as an administrative body in revising the values put on property in the first instance by the taxing districts, may file a petition of appeal to this same county board of Taxation (see N. J. S. A. 54:3-22 enumerated below) which then sits as a judicial body, has open hearings at which appear witnesses, under oath, both sides are represented by counsel and this body may then change, revise and correct the assessment put on by itself, in its revision, in accordance with the true value of the taxable property.

11. This taxpayer, by that time a bankrupt, did not choose to take advantage of the relief under the New Jersey statutes, but neglecting to do so, now endeavors to invoke the aid of the United States Supreme Court by claiming that he had been deprived of his constitutional right of appeal.

12. The City Collector, subsequent to this, in conformity with the Bankruptcy Act, on September 7, 1943, filed a formal Supplemental Proof of Claim with the Referee showing a valuation on the personal property of $165,000. upon which taxes were due in the sum of $11,805.05, instead of and in place of the original claim of taxes in the sum of $3,024.96.

13. As to the encumbered personal property located upon the bankrupt's premises in the taxing district of Jersey City, as it was noted above that N. J. S. A. 54:4-64, provides that the validity of any tax or assessment shall not be affected by the failure of the taxpayer to receive his tax bill. This taxpayer could have had relief as to his interest in the personal property by appealing to the County Board of Taxation and under N. J. S. A. 54:4-14 (see enumerated below), said Board could determine that a deduction of all debts due and owing from such persons to creditors residing in the State, could be made. But in the absence of the prerequisite of a claim for reduction, the taxing authority would have no knowledge of any other interest than that of the owner. However, if there had been such an appeal, the County Board could not allow the deduction because N. J. S. A. 54:4-15 provides:

> "No deduction for debt shall be allowed from the assessed value of tangible goods and chattels in which the value inheres in and is supported by the thing or article itself."

14. There is another important point in the history of this case; besides the fact the bankrupt taxpayer did not take advantage of the relief given him by the State statutes by appealing to the County Board of Taxation, and then if dissatisfied, could appeal to the State Board of Taxation, and if dissatisfied there could apply to the State Supreme Court for a Writ of Certiorari; and that is that the Referee in Bankruptcy found as a fact that the mortgages and conditional sales mentioned in the petitioner's brief, were held by non-resident corporations, and that the assessment made by the Hudson County Board of Taxation could not be decreased by the amount of these liens, as contended by the Trustee-Appellant (Tr. 67, Appendix 6A).

Reasons Why Writ Should Not be Allowed.

1. There is no question of constitutional law arising out of the determination in the courts below. There is no reason why consideration and determination of the questions raised by the appellant should be considered.

2. The determination by the court below was not in disregard of the rights of petitioner as trustee in bankruptcy, and of the rights of general creditors of the Spier Aircraft Corporation, because relief was provided by the New Jersey statutes, and by certiorari if the taxpayer-trustee had taken advantage of same. The Referee in Bankruptcy found as a fact that the encumbered personal property was taxable under the New Jersey statutes.

3. The contention that the incumbered personal property should be taxable only to the extent of the special property existing in favor of the bankrupt, is without authority, and unfounded in the law, because the statute provides that no deduction or debt shall be allowed from the assessed value of tangible goods and chattels in which the value inheres in and is supported by the thing or article itself.

4. The raising of the question whether or not legal title, or equitable title, or interest of some of the parties in the tangible personal property is not well taken, because the statute does not leave the assessor in so precarious a position with regard to his tax collection as might be involved in the unraveling of the snarled relations between conditional vendors, chattel mortgages, with recorded or unrecorded assignment of interest and so on, and the government's right to collect tax levies may not be thwarted or complicated by a theoretical division of that which has long been regarded by our jurisprudence as one chattel in which the value inheres and is supported by the thing or article itself.

5. In sustaining the controverted claim, the Court below in approving the methods of taxing authorities, in effect, a so-called "over assessment," followed the ruling in the case of *Nashville & St. L. Ry.* vs. *Browning,* 310 U. S. 362 at page 370.

6. The increased assessment was not the result of arbitrary and capricious acts on the part of the taxing authority, nor was it the product of hearsay, because the record shows that the taxing authorities did investigate before arriving at its value. It will later be shown that the trustee-taxpayer did not take advantage of the right of appeal at the date he could have done so. The statute provides for relief with trial, hearing, afforded to both parties, witnesses and cross examination. The trustee-taxpayer did not take advantage of this statute.

7. The Fifth Amendment to the United States Constitution cannot be invoked because this amendment is a limitation on the power of Congress and is not a limitation on the powers of the States (*Brown* vs. *New Jersey,* 20 S. Ct. 77; *Hallinger* vs. *Davis,* 13 S. Ct. 105; *State* vs. *Black,* 5 N. J. Misc. 48). The challenge in this case is against the remedy provided in the New Jersey statutes.

8. Respondent in the interest of brevity (Rule 38, Paragraph 2) restricts further argument on these points, but respectfully refers to and incorporates by reference thereto of all the matters presented to the United States Circuit Court of Appeals for the Third Circuit, in the transcript of the record on appeal, with the same variance and effect, as if herein set out at length.

WHEREFORE, respondent prays that the Writ of Certiorari will be denied, and that the decree of the United States Circuit Court of Appeals for the Third Circuit, be affirmed by this Honorable Court.

CHARLES A. ROONEY,
Counsel, City of Jersey City,
New Jersey.

Supreme Court of the United States

OCTOBER TERM, 1946. No.

IN THE MATTER
of
SPIER AIRCRAFT CORPORATION,
Bankrupt,
SAMUEL M. COOMBS, JR., Trustee in Bankruptcy of Spier Aircraft Corporation, Bankrupt,
Petitioner.

Brief in Opposition of Petition for Writ of Certiorari.

I.

Opinion Below.

The United States Circuit Court of Appeals for the Third Circuit rendered a *per curiam* opinion on May 1, 1946, and is reported in Fed. (2d) .

II.

Jurisdiction.

This Court should not take jurisdiction because the Fifth Amendment to the United States Constitution is a limitation on Congress, and not on the State of New Jersey. *Hallinger* vs. *Davis, supra.*

III.

Statement of the Case.

The essential facts are fully set forth in the accompanying summary statement of the matter involved and in the interest of brevity are not further elaborated upon. The points involved will be discussed in the argument to follow.

APPENDIX "B."

Questions Presented

1. When the laws of the sovereign state have been complied with by the taxing authority, can a tax claim filed in conformity with such law, be held to be invalid?

2. When the laws of the sovereign state have been complied with by the taxing authority, can a tax claim filed in conformity with the Bankruptcy Act, be held to be invalid?

3. Will the United States Supreme Court disturb the findings of fact by the Referee in Bankruptcy, which has been concurred in by the United States District Court of New Jersey, and by the United States Circuit Court of Appeals, for the Third Circuit?

4. Can tangible personal property, actually located in the taxing district of Jersey City, New Jersey, title to which is in the bankrupt, be held to be taxable only to the extent of the bankrupt's interest to the exclusion of chattel mortgages and condition contracts of sale, leaving the taxing district in so precarious a position in its tax collection as is involved in the unraveling of the snarled relations between those in interest, such as recorded and unrecorded assignments, options to buy, and so on, so that the district's

right to collect taxes would be thwarted by a theoretical division of that which has been regarded as taxable personal property in New Jersey's jurisprudence?

POINT I.

Over-assessment of Petitioner's property constitutes no deprivation of any right under the Federal Constitution.

This conclusion was reached in *Nashville C. & St. Ry.* vs. *Browning,* 310 U. S. 362, at the bottom of page 370 to 371. Suit had been brought by the Nashville, Chattanooga & St. Louis Railway against Gorden Browning and others, constituting the State Board of Equalization of Tennessee, to set aside an assessment of plaintiff's property, tangible and intangible, under Tennessee's *ad valorem* tax law. A judgment of dismissal was affirmed by the Supreme Court of Tennessee and plaintiff brought certiorari to the United States Supreme Court. The later Court affirmed the judgment of the state court.

Mr. Justice Frankfurter delivering the opinion of the Court, states on page 370:

> "Thorough canvass by the state courts found no justification for upsetting the determination of the Commission, and we could scarcely find warrant in the record for doing so. *But even assuming that there was an over-assessment, constitutional invalidity would not follow.* If the needs of a state require higher taxes, the Fourteenth Amendment certainly does not bar their imposition. The maintenance of higher assessment in the face of declining value is merely another way of achieving the same result."

Counsel for the Trustee, in his petition, calls the increase in the tax, a "re-valuation," but in his conclusion (paragraph "B," page 22), he states:

> "Should the litigation pending in the United States Court of Claims ultimately result in a determination that the trustee is entitled to recover the amount offered

> by the government, to wit, $133,850.56, then the amount of the supplemental claim which was predicated upon an alleged valuation of $165,000 would be obviously excessive. In addition, there is no proof as to the items which made up the property for which $165,000 was bid, and in the absence of such proof, the taxpayer is unable to safeguard his constitutional rights."

This, we submit, is an argument that the valuation of $165,000 is an over-assessment and, therefore, unconstitutional. Thus, it falls squarely within *Nashville C. & St. Ry.* v. *Browning, supra,* and this Court will not entertain such an appeal.

POINT II.

It is not the function of the equal protection clause of the Fourteenth Amendment to uproot systems of taxation inseparable from the states' tradition of fiscal administration and ingrained in the habits of its people.

Again we quote *Nashville C. & St. L. Ry.* v. *Browning, supra.* The Court says on page 369 of Vol. 310, U. S. Reports:

> "Deeply embedded traditional ways of carrying out state policy, such as these of which the petitioners complain, are often tougher and true law than the mere dead words of the written text."

Compare *Carino* v. *Insular Government,* 212 U. S. 449, 459, 29 S. Ct. 334.

Not only does the Trustee for the bankrupt herein fail to show facts sufficient to sustain his argument, but in his petition and memorandum merely states, that by the time the proof of claim was filed by the Collector of the City of Jersey City, it was too late to appeal under the New Jersey statute.

However, N. J. S. A. 54:4-64 provides as follows:

> "54:4-64. Delivery of Tax bills.
>
> "As soon as the tax duplicate is delivered to the taxing district, as provided in section 54:4-55 of this title, he shall at once begin the work of preparing, completing, mailing or otherwise delivering tax bills to the individuals assessed, and shall complete that work at least two months before the third installment of taxes falls due. He shall also, at least two months before the first installment of taxes for the year falls due, prepare and mail, or otherwise deliver to the individuals assessed, a tax bill for such following first and second installments, computed as hereinafter provided at one-

half of the complete tax last previously levied. The validity of any tax or assessment, or the time at which it shall be payable, shall not be affected by the failure of a taxpayer to receive a tax bill, but every taxpayer is put upon notice to ascertain from the proper official of the taxing district the amount which may be due for taxes or assessments against him or his property."

The Collector, as recited in the facts, did send the tax bill according to law and even in the event that the bankrupt did not receive the tax bill, which is not true, under this statute it was incumbent upon him to investigate and discover how much taxes were due. Rosenblum, on cross-examination, stated the bankrupt "had from April 1 to August 15 within which to file an appeal." (Appendix, p. 3a, bottom, Trustee-Appellant's brief.) (Before U. S. Circuit Court, 3rd Circuit.)

The tax is to be tested by the law of the sovereignty. The statutes of New Jersey further provide:

"54:4-35. Period for assessing; assessor's duplicate.

"The assessor shall begin the work of making assessments upon real and personal property on October first in each year and shall complete the work by January tenth following, on which date he shall attend before the county board of taxation and file with the board his complete assessment list, and a true copy thereof, to be called the assessor's duplicate, properly made up and legibly written in ink, to be examined, revised and corrected by the board as hereinafter provided."

"54:4-46. Tax lists and duplicates revised by county board.

"Upon the filing of the assessment lists and duplicates by the assessors with the county board of taxation, the board shall meet for the purpose of examining, revising and correcting the tax lists and duplicates. Any assessor shall attend before the board at such time and place as it may direct, and shall, under the direction

and supervision of the board, make up and prepare corrected tax lists and duplicates."

In interpreting this section the New Jersey Supreme Court in the case of *Middletown Township* vs. *Ivins,* 102 N. J. L. 36, that:

> "Under P. L. 1906, p. 211, Sec. incorporated in title 54:3-13 relating to duty of county boards of taxation, and provisions of this section, in proceeding by the county board of taxation to increase assessed value of properties in various taxing districts of county, it was immaterial how or from what source county board obtained information that property was not being assessed at true value, and fact that information came partly from State Board of Taxes and Assessment did not affect legality of proceedings."
>
> Title 54:3-13 provides:
> "Each county board of taxation shall secure the taxation of all property in the county at its true value, in order that all property * * * shall bear its full, equal and just share of taxes."

The same case, *Middletown Township* vs. *Ivins,* further holds:

> "Increase of assessed value of property by County Board of Taxation would be deemed to have been made after investigation on showing that members of the Board were familiar with value of property and made general inspection and investigation."
>
> 54:4-47. Revision and equalization; functions of county board.
> "The county board may adjourn from time to time in the discharge of its duties, and may, after investigation, revise, correct and equalize the assessed value of all property in the respective taxing districts, increase or decrease the assessed value of any property not truly valued, add to the lists and duplicates any property which has been omitted or overlooked, at its true value,

and in general do everything necessary for the taxation of all property in the county equally and at its true value."

The courts have held in *Paulison* vs. *Taylor,* 35 N. J. L. 184, that:

"Every intendment would be made as to the legality of the proceedings of the board of assessors in reviewing the assessments for the purpose of equalizing them."

54:4-55. Corrected duplicates returned to taxing districts; lists remain of record.

"The county board of taxation shall, on or before April first in each year, cause the corrected, revised and completed duplicates, certified by it to be a true record of the taxes, assessed, to be delivered to the collectors of the various taxing districts in the county, and the tax lists shall remain in the office of the board as a public record."

In interpreting this section the courts have held that:

"No notice is required to taxing districts or to individual property owners of proceedings by county board of taxation, under 54:4-46 to 54:4-48 to increase assessed value of properties in various taxing districts or county."

Middletown vs. *Ivins, supra.*

"Collector was under duty to send bill for taxes."

Knox vs. *O'Shea,* 4 N. J. Misc. 272.

54:4-64. Delivery of tax bills.

"As soon as the tax duplicate is delivered to the collector of the taxing district, as provided in section 54:4-55 of this title, he shall at once begin the work of preparing, completing, mailing or otherwise delivering tax bills to the individuals assessed, and shall complete that work at least two months before the third installment of taxes falls due. He shall also, at least two months before the first installment of taxes for the year falls due, prepare and mail, or otherwise deliver to the

individuals assessed, a tax bill for such following first and second installments, computed as hereinafter provided, at one-half of the complete tax last previously levied. *The validity of any tax or assessment, or the time at which it shall be payable, shall not be affected by the failure of a taxpayer to receive a tax bill, but every taxpayer is put upon notice to ascertain from the proper official of the taxing district the amount which may be due for taxes or assessments against him or his property.*"

The courts have held in New Jersey that:

"Local taxes are due and payable in four installments—on the first day of February, May, August and November in each year."

George A. Fuller Co. vs. *City of Jersey City,* 21 Misc. 38.

"Collector was under a duty to send bill for taxes and accept and receipt for those tendered."

Knox vs. *O'Shea,* 4 N. J. Misc. 272.

This taxpayer did not safeguard his rights by using the method in the New Jersey statutes.

54:3-21. Appeals by taxpayers; by taxing districts; petition.

"A taxpayer feeling aggrieved by the assessed valuation of his property, or feeling that he is discriminated against by the assessed valuation of other property in the county, or a taxing district which may feel discriminated against by the *assessed valuation of property in the taxing district,* or by the assessed valuation of property in another taxing district in the county, may on or before August fifteenth appeal to the county board of taxation by filing with it a petition of appeal. A copy thereof shall also be filed with the clerk or attorney of the taxing district, setting forth the cause of complaint, the nature and location of the assessed property and the relief sought. The petition shall be signed and sworn to by the petitioner or his agent,

and shall be in such form and contain such further information as may be from time to time prescribed by rule of the board, for the better understanding and determination of the appeal."

54:3-22. Hearing of appeals; witnesses.

"The board shall thereupon make such order respecting the time and manner for hearing the appeal as it may deem just, and shall summarily hear and determine the appeal, and revise and correct the assessment in accordance with the true value of the taxable property. It may compel the attendance of witnesses, the production of books and papers before it, examine witnesses or cause witnesses to be examined under oath before it, which oath may be administered by a member of the board."

POINT III.

When a case comes up on appeal after concurrent findings by the Referee in Bankruptcy and the District Judge, such findings of fact will not be set aside on anything less than a demonstration of plain mistake.

The above proposition is laid down in the case of *Ohio Valley Bank* vs. *Mack*, 163 Fed. 155, at 158; 24 L. R. A. (NS) 184.

Assuming, for the sake of argument, the Referee in Bankruptcy had power to review the assessment in the first instance (and Trustee-Appellant contends he did), his conclusion that the valuation of $165,000 placed on the personal property of the bankrupt by the Hudson County Tax Board, was a finding of fact.

In the opinion filed by District Court Judge Meaney, he concluded as follows:

> *"Having properly determined that it was within his power to review under the circumstances, the Referee concluded that the assessment and valuation was properly arrived at, and allowed the supplemental proof of claim in full.*
>
> *"After a careful examination of the Referee's report and the memorandum filed by the trustee, and after a thorough perusal of the testimony and briefs previously submitted, it is my determination that the Referee's conclusions were proper and should be affirmed in all respects."* (Appendix p. 9a, Trustee-Appellant's brief. Before U. S. Circuit Court.)

Remington on Bankruptcy, holds in Section 3796, page 123, Volume 8:

> "A referee's findings are presumptively correct when a judge refuses to accept the finding of a referee, and an appeal is taken, it is the finding of the judge that is

presumptively correct, not that of the referee. (Citing cases.)

"There is a presumption of verity that the judge had evidence or admissions to justify him in rejecting the referee's findings. (Citing cases.)

"Some courts say that when the judge rejects the referee's findings, the appellate court has the same power over the judge's findings that the judge had over the referee's findings. (Citing cases.)

"The seventh circuit holds that when a judge and referee conflict, they do not try the case de novo on the record, but determine whether or not the judge exceeded the power to review conferred on him. (Citing cases.)

"This position was reaffirmed by the same court in a later case. (Citing cases.)

"*It is only when the case comes up on concurrent findings that the findings will not be set aside except for plain mistake.*" *Kowalsky* v. *American Employers Ins. Co.*, 90 F. (2d) 476, 34 A. B. R. (NS) 280.

As shown above in Judge Meaney's opinion, the said judge reviewed everything that was before the referee.

The referee in his memorandum, not only upholds the valuation of the personal property put on by the Hudson County Board, but also shows why he did it, in the following language:

"*In my opinion, the valuation of $165,000 placed on the personal property of the bankrupt by the Hudson County Board must be accepted unless the record shows proof sufficient to warrant a rejection of that valuation. I do not find in the record, proof sufficient to show that the valuation is erroneous. All the personal property of the bankrupt was requisitioned by the Navy Department with the exception of certain personal property which was later sold for $3,628.45. The Navy preliminarily determined the value of the property which it requisitioned at $133,650.56, but the trustee was not satisfied with this valuation and has*

obtained permission to reject the proposal of the Secretary of the Navy to pay this sum and has been authorized to institute suit in the Court of Claims for such sum as he deems fair and just compensation. This is the only other proof with respect to the value of the personal property upon which the taxes for 1943 were assessed, and it is not sufficient to show that the value of the property may not well have been $165,000.''

The brief in behalf of the trustee-appellant is barren of any allegation or demonstration of mistake.

POINT IV.

Tangible personal property, actually located in the taxing district of Jersey City, legal title to which is in the bankrupt, is taxable by said authority according to its true value, regardless of chattel mortgages or conditional sales, or theoretical division of interest in the property.

54:4-15. When deductions not to be made or allowed; mortgages; when taxable.

"No deduction for debt shall be allowed from the assessed value of tangible goods and chattels in which the value inheres in and is supported by the thing or article itself. No allowance or deduction shall be made for personal property or securities claimed to be exempt from taxation, unless a sworn claim therefor shall be made, setting forth a detailed list of the securities and personal property claimed to be exempt, the dates when they were purchased, and that they were not purchased with intent to escape taxation. No mortgage on personal property, or on both personal and real property, or the debts secured by the mortgage, shall be assessed for taxation unless a deduction therefor shall have been claimed by the owner of the mortgaged property and allowed by the assessor. The governing body of a taxing district may regulate and fix the time within which statements of taxable property shall be made and delivered to the assessors."

The statutes of New Jersey do not put a duty on the taxing district to investigate every piece of tangible personal property in the district to determine whether there is any outstanding interest other than that of the owner of title. Where such a situation exists, the statute requires that the taxpayer make application for such exemption to the taxing district.

The language used in the *Becker* vs. *Little Ferry Borough,*

125 N. J. L. 141, while it applies to land, is very significant in overcoming my opponent's contention before your Honorable Court.

> "While a landlord and tenant, by their contract or dealings, may affect such a division of tax liability as between themselves as to cause buildings or improvements upon the lands to take on the aspect of chattels, real or even mere chattels, a municipality may not be left in so precarious a position with regard to its tax collections as is involved in the unraveling of the snarled relations between the landowner and the succession of tenants in the instant case, with recorded and unrecorded leases, options, provisional permits, assignments of interest, and so on, and the government's right to collect tax levies may not be thwarted or complicated by a theoretical division of that which has long been regarded by our jurisprudence as reality into subdivisions with ill-defined limits and vague attributes."

In the case at bar, however, the referee has found as a fact that the mortgages and conditional sales mentioned in the Trustee-Appellant's brief below, were held by non-resident corporations, and that the assessment made by the Hudson County Tax Board could not be decreased by the amount of these liens, as contended by the Trustee-Appellant.

The answer to this contention is contained in the memorandum filed by the referee as follows (Appendix, p. 6a, Trustee-Appellant's brief):

> "There are several reasons why this decree cannot be made. *First*: Under New Jersey Revised Statutes, Section 54:4-14 the valuation of personal property cannot be reduced by amounts owing to creditors who do not reside in the State of New Jersey. Neither the Modern Industrial Bank nor the Commercial Investment Trust, Inc., is a resident of this state. The proofs do not show where William Meyerhoff resides and without such proof, his claim also cannot be deducted.

Second: The personal property on which the tax was assessed was (Page 68) tangible personal property. Section 54:4-15 of the Revised Statutes provides that such a deduction cannot be made from the assessed value of tangible personal property. *Third*: Proper steps were not taken to obtain the deduction. *In re*: *A. V. Manning Sons,* 16 Fed. Supp. 932; *In re*: *Wilsonite Corporation,* 28 Fed. Supp. 913.

"The trustee's attorney relies also for such deduction on Section 64a(4) of the Bankruptcy Act, but this section provides 'No order shall be made for the payment of a tax assessed against any property of the bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the Court.' Obviously, the payment of the full tax claimed by Jersey City will not exhaust the value of the bankrupt estate's interest in the property on which the taxes were assessed. The value of the property on which the tax was assessed is substantially in excess of the amount due on the conditional sales contracts and the chattel mortgage and the tax claimed by the City of Jersey City."

The record does not show that any application was ever made by the bankrupt for any exemptions which he might have had because of outstanding interest through conditional sales agreements or chattel mortgages. The tangible personal property of the bankrupt is, therefore, taxable in full.

Conclusion.

Respondent contends that there is no manifest injustice in the determination by the Court below for the following reasons:

(a) It does not follow that the determination of the Court below required the trustee to pay a tax upon property which did not belong to the bankrupt, thus depriving the bankrupt's creditors of money belonging to them. If a tangible chattel is assessed at a certain value and is owned by more than one party, the creditors of one owner cannot complain because the person against whom they have a lien had to pay the whole tax. Their remedy is against the other owners of interest.

(b) The challenge of the correctness of the decision by the United States Circuit Court of Appeals for the Third Circuit, which affirmed an order of the United States District Court for the District of New Jersey, upholding the increased assessment from $30,000.00 to a valuation of $165,000, demonstrates that this appeal is an attempt to correct an asserted "over-assessment." This Court will not entertain such an appeal.

(c) The laws of New Jersey, as enumerated above, have been complied with. The Hudson County Board of Taxation revised and corrected the valuation of the property herein. The Collector of the taxing district corrected his duplicate to conform, in accordance with the statute above recited. With the raised assessment it was mandatory on the collector to increase the tax bill. He thus increased it, mailed to the Spier Aircraft Corporation, on or before July 31, 1943, and served the Referee in Bankruptcy with the formal amended Proof of Claim on September 7, 1943. The trustee-taxpayer stood in the same position as any

other taxpayer and could have appealed to the Hudson County Board of Taxation between July 31, 1943, and August 15, 1943. It neglected to do so. The taxing district not alone conforming to the state laws but conforming to the bankruptcy laws, then filed the amended claim on September 7, 1943.

(d) The method used of arriving at a higher value was not violative of the petitioner's constitutional rights of protection against deprivation of property without due process of law, under the Fifth Amendment. This amendment is a limitation on the Congress of the United States and not on the states.

It is respectfully submitted, therefore, that the judgment of the United States Circuit Court of Appeals, for the Third Circuit, be affirmed and that the application for a Writ of Certiorari be denied.

Respectfully submitted,
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Counsel for Respondent,
City of Jersey City, New Jersey.